

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
MYRON CORP.,	:
	:
Plaintiff	:
	:
v.	:
	:
HOLLAND USA, INC D/B/A AMSTERDAM	:
PRINTING,	:
	:
Defendants.	:
	:
-----X	

Case No. 07-CV-6877 (PAC)

**REPLY DECLARATION OF MARIO AIETA IN FURTHER  
OPPOSITION TO PLAINTIFF'S REQUEST FOR A  
PRELIMINARY INJUNCTION**

I, MARIO AIETA, declare under penalty of perjury:

1. I am a partner of the law firm of Fross Zelnick Lehrman & Zissu, P.C., counsel for Defendant in this action. I make this reply declaration in further opposition to Plaintiff's Request for a Preliminary Injunction.

2. Prior to the commencement of the first deposition in this action, counsel for the parties agreed that until such time as a formal protective order was entered in this case by the Court, counsel for either party could designate exhibits or deposition testimony as either Confidential or For Attorneys' Eyes Only. At the deposition of the parties' 30(b)(6) witnesses, counsel for both parties designated certain parts of the transcript as For Attorneys Eyes Only.

3. Exhibit 21 to the Declaration of Richard Jacobson submitted in support of plaintiff's request for a preliminary injunction, which is described by Mr. Jacobson as a "true and accurate copy of the deposition transcript of Kevin Kirbey," is actually only the first 49 pages of the transcript. The transcript of Mr. Kirbey's deposition is 85 pages in

length (not including signature page, errata page and exhibit page).

4. Attached hereto as Exhibit M are pages 50 to 73 and pages 84 and 85 of the transcript of the deposition of Kevin Kirbey. Certain parts of the testimony contained on pages 74 to 83 has been designated as For Attorneys Eyes Only and, therefore, is not included in Exhibit M.

I declare under laws of perjury of the United States of America that the foregoing is true and correct and this declaration was executed on September 27, 2007 at New York, New York.

  
\_\_\_\_\_  
Mario Aieta

Exhibit M

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 MYRON CORP.,

6 Plaintiff,

7 vs.

8 HOLLAND USA, INC. D/B/A/  
9 AMSTERDAM PRINTING

10 Defendant.

11 -----x

12 September 19, 2007

13 1:30 p.m.

14  
15  
16 Deposition of KEVIN KIRBEY, held at  
17 the offices of Colucci & Umans, 218 East  
18 50th Street, New York, New York before  
19 David Henry, a Certified Shorthand Reporter  
20 and Notary Public of the State of New York.  
21  
22  
23  
24  
25

A P P E A R A N C E S:

COLUCCI & UMANS

Attorneys for Plaintiff

218 East 50th Street

New York, New York 10022

BY: RICHARD P. JACOBSON, ESQ.

AND: FRANK J. COLUCCI, ESQ.

FROST ZELNICK LEHRMAN & ZISSU, PC

Attorneys for Defendant

866 United Nations Plaza

New York, New York 10017

BY: MARIO AIETA, ESQ.

ALSO PRESENT:

ROBERT LACK

1 Kirbey

2 Q. During the break we marked this  
3 calendar as Exhibit 19. Have you seen --  
4 you've seen a calendar like this  
5 previously, a Myron calendar?

6 A. Yes.

7 Q. Is this substantially the same as  
8 what you've seen previously?

9 A. I think so.

10 (Deposition Exhibit 20, Amsterdam  
11 Calendar, marked for identification.)

12 Q. And would you identify Exhibit  
13 20?

14 A. That is our calendar.

15 Q. And how do you refer to this  
16 calendar internally?

17 A. Good question, because I don't  
18 normally. I refer to it as the calendar  
19 and pen sleeve. Other folks, I really  
20 don't know to be honest with you. We  
21 haven't talked about it that much.

22 Q. Is it referred to by teamwork?

23 A. I don't know, to be honest with  
24 you.

25 Q. Is it referred to as mountain

1 Kirbey

2 climbers?

3 A. I don't know.

4 Q. Is this the only pocket calendar  
5 with a pen and pen sleeve that you make?

6 A. Yes.

7 Q. Who is Jing Mahler?

8 A. She works in our new product  
9 development area.

10 Q. And what is her function?

11 A. A lot of coordination,  
12 communication, trying to make sure things  
13 get done on time. Kind of a  
14 jack-of-all-trades, so to speak.

15 Q. Is she responsible for creating  
16 the design or implementing?

17 A. Well, mostly just coordinating  
18 between vendors and our internal folks  
19 primarily.

20 Q. And how long has she been at  
21 Amsterdam?

22 A. I think she started in 2004, but  
23 it could have been 2005. I can't be sure.

24 Q. And what is the -- does a single  
25 factory make your teamwork calendars?

1 Kirbey

2 A. Yes.

3 Q. Are they made overseas?

4 A. Yes.

5 Q. Is this a factory that you've  
6 done business with previously?

7 A. Yes.

8 Q. Is it somebody calls up Amsterdam  
9 to order this calendar, and let's say they  
10 don't have the product code or the SKU, how  
11 would they order it, do you know?

12 A. I have no idea.

13 Q. Are you aware of any anecdotal  
14 instances where people have called up and  
15 ordered the mountain climber calendar?

16 A. No.

17 Q. Do you know what materials were  
18 sent to the factory to create the samples  
19 for the defendant's teamwork calendar?

20 A. I don't know for sure. I have  
21 heard different stories about that.

22 Q. From whom have you heard stories?

23 A. Jing.

24 Q. What did she tell you?

25 A. She said initially there was a



1                   Kirbey  
2     sample of a Myron calendar with a pen in  
3     it. She couldn't remember which one. And  
4     they she said their balance was our  
5     Richford calendar, which is the stitched  
6     version of this without the pen sleeve with  
7     material fabricated to it and a pen put  
8     into it.

9           Q.     So Jing told you that Myron's  
10    calendar with the pen and pocket sleeve was  
11    sent to the factory to help fabricate --

12          A.     She didn't send it, she heard  
13    that it was sent. She herself can't  
14    remember if she actually sent it.

15          Q.     Who was responsible for coming up  
16    with the color scheme for these calendars?

17          A.     That's a good question. I'm not  
18    totally sure. I can guess it's one of  
19    three people.

20          Q.     And who would those be?

21          A.     Margaret Enzien, Joe Achzet or  
22    Michael Terrenzetti.

23          Q.     And is it the Richford calendar  
24    that you said the design or the fabrication  
25    is base upon with the stitching?

1 Kirbey

2 A. Yes.

3 Q. Does the Richford use the same  
4 color team as your teamwork calendar?

5 A. It's offered in multiple  
6 calendars. I don't know if there's an  
7 exact scheme like that, but it's probably  
8 offered in eight or 12 different color  
9 combinations.

10 Q. Would there be a blue and black  
11 combination?

12 A. I don't know. I know of a blue  
13 and brown, I don't know about blue and  
14 black.

15 (Deposition Exhibit 21, D000050-52,  
16 marked for identification.)

17 (Deposition Exhibit 22,  
18 D000105-110, marked for identification.)

19 Q. Other than the flying geese  
20 design, do you have any other calendars  
21 that use the same blue and black color  
22 scheme?

23 A. Meaning in general blue and  
24 black?

25 Q. Yes.

1 Kirbey

2 A. Yes.

3 Q. How would you describe the color  
4 arrangement on this product, Exhibit 20?

5 Is this a four color, a two color, what  
6 would the technical description be?

7 A. Probably two.

8 Q. Take a look at Exhibit 21,  
9 please. Have you read through the  
10 document?

11 A. Yeah, I skimmed through it.

12 Q. So on the first page, the first  
13 substantive e-mail indicates that it was  
14 sent December 15, 2006, do you see that?

15 A. Yes.

16 Q. From Jing Mahler to Jake Jan, and  
17 it states, I will start ordering process  
18 for the teamwork climbing hardcover with  
19 pen next Monday.

20 A. Okay.

21 Q. Can you tell me what that means?

22 A. Start putting together a forecast  
23 and an idea of what they want and sell it.  
24 It means at that point they would put  
25 together a forecast of how much they want

1 Kirbey

2 to buy.

3 Q. And the teamwork with climbing  
4 hardcover, is that what Exhibit 20 is?

5 A. I believe so.

6 Q. Turn to the second page. And it  
7 states or indicates that it's a note from  
8 Jake Jan to Jing Mahler of your company.  
9 Dear Jing -- can you read paragraph 2,  
10 please.

11 A. Number 2?

12 Q. Yes.

13 A. I leave the sample you gave, your  
14 competitor's sample in TPE office but its  
15 vinyl was too rough and we reject it  
16 remember and I don't suggest that.

17 Q. Do you know what Jake Jan is  
18 referring to in his e-mail to Jing Mahler?

19 A. I believe he is referring to the  
20 calendar with the pen in it.

21 Q. The Myron calendar?

22 A. Yes, I think. I haven't been  
23 able to confirm that.

24 Q. Looking at and touching Exhibit  
25 19 which is the Myron calendar, would you

1 Kirbey

2 say that that is a rough vinyl?

3 A. Would I say it's a rough vinyl?

4 No.

5 Q. Do you know, do you have

6 experience in that?

7 A. I would say no, it's not a rough

8 vinyl.

9 Q. But you don't know whether Jake

10 Jan was referring to the Myron -- you think

11 Jake Jan was referring to the Myron sample?

12 A. I believe he was, but I'm unable

13 to confirm that.

14 Q. All right, turn to the third page

15 of Exhibit 21. And here is another note to

16 Jake. This is from Jing dated November 24,

17 2006. And it states in item 1, do you

18 still have the calendars we sent to you in

19 the beginning, which is one of our

20 competitors' calendars with mountain

21 climbing. If you do, please quote that

22 exactly calendar to us. Had you seen this

23 before?

24 A. Have I seen this e-mail before?

25 Q. Yes.

1 Kirbey

2 A. Not until I pulled it for this  
3 inquiry.

4 Q. Is there any other competitors'  
5 calendar with the mountain climbing that  
6 could be referred to in this paragraph  
7 other than Myron's?

8 A. Not that I am aware of.

9 Q. All right, I'm done with that  
10 exhibit. This e-mail from Jing Mahler to  
11 Jake Jan says here is the artwork for the  
12 teamwork calendar, and the last page seems  
13 to be just a black outline with the words  
14 teamwork and some other words. Do you know  
15 if design appears on the electronic version  
16 of this document?

17 A. I don't know. This specific  
18 document, I don't know.

19 MR. JACOBSON: Counsel, do you  
20 know, there are a number of instances  
21 like this where the attachments to the  
22 e-mails are illegible. Do you  
23 know whether or not the electronic  
24 versions are available and can be  
25 printed in a legible manner?

1 Kirbey

2 MR. AIETA: I disagree with  
3 your characterization that it's  
4 illegible, but that's what the  
5 electronic version looks like.

6 MR. JACOBSON: Is there a  
7 graphic that appears on it?

8 MR. AIETA: It looks like that.  
9 It's been scanned, so that's how it  
10 looks, the one we have, that's how it  
11 looks. There may be better ones  
12 available.

13 Q. Were you involved in the  
14 development of the defendant's teamwork  
15 design that culminated in Exhibit 20?

16 A. I was involved in the pen being  
17 attached to the calendar to ensure that we  
18 could hot stamp on the product.

19 Q. That you could what?

20 A. That we could hot stamp on it, so  
21 I was involved in making sure that this was  
22 engineered correctly.

23 Q. What about the layout of the text  
24 and the graphic itself?

25 A. No.

1                                   Kirbey

2           Q.   Did you have any approval or  
3 oversight of the final product?

4           A.   Not at all. I did have approval  
5 to ensure that the pocket was to spec on  
6 the calendar to hold the pen.

7           Q.   Who would have been involved in  
8 arranging the layout of the text on the  
9 calendar?

10          A.   Most likely Margaret Enzien.

11          Q.   Do you know whether she sought  
12 any guidance from anybody else?

13          A.   How do you define guidance?

14          Q.   Instruction.

15          A.   In regard to what?

16          Q.   In regard to the layout.

17          A.   Meaning just how far the letters  
18 are spaced apart?

19          Q.   Yes.

20          A.   My guess is she would have asked  
21 somebody in manufacturing to stand firm to  
22 make sure the letters didn't bleed  
23 together.

24          Q.   What about centering the text as  
25 opposed to having it be oriented to the



1 Kirbey

2 left, do you know about any discussions in  
3 that respect?

4 A. No, none at all.

5 Q. Do you know whether anybody at  
6 Holland or any of the affiliated entities  
7 expressed any concern about what became  
8 Exhibit 20 in terms of it being too similar  
9 to Myron's design?

10 A. No.

11 Q. When you sent the product to your  
12 legal counsel for review, do you know  
13 whether Myron's calendar was sent as well?

14 MR. AIETA: Objection.

15 A. I don't know. I'm not even sure  
16 that the actual product was sent. I don't  
17 know if it was just a picture.

18 Q. In terms of the sequence of  
19 events regarding which design was developed  
20 first for you, the mountain climber or the  
21 flying geese, do you have any knowledge?

22 A. No.

23 Q. Do you know whether any  
24 alternative designs were considered to go  
25 with the teamwork and together we can

1 Kirbey

2 achieve the impossible phrase?

3 A. I don't know.

4 Q. As far as you know, when was the  
5 first time that defendant offered any  
6 version of the teamwork calendar in its  
7 catalogues or for sale?

8 A. January, 2007.

9 Q. And by that you are referring  
10 only to the Windmill catalogue?

11 A. Correct.

12 Q. Did Amsterdam have the  
13 defendant's teamwork calendar in January,  
14 2007?

15 A. No.

16 Q. Do you know when Amsterdam first  
17 offered the calendar?

18 A. May, 2007.

19 Q. And what is your basis for  
20 stating that it was offered in May?

21 A. I have a catalogue in detail  
22 behind when it was made.

23 Q. Which catalogue did it first  
24 appear in?

25 A. It's a large tabloid. We call it

1 Kirbey

2 a tabloid, it's thin, it's about this big.

3 Q. Do you know the name of it?

4 A. Just the Amsterdam tabloid.

5 Q. Does it say tabloid?

6 A. I don't think it says tabloid, it  
7 just says Amsterdam.

8 (Deposition Exhibit 23,  
9 D000259-282, marked for identification.)

10 Q. Take a look at Exhibit 23. Can  
11 you tell me if that's the catalogue that  
12 the defendant's teamwork calendar first  
13 appeared in?

14 A. I don't believe so.

15 Q. Why don't you think that Exhibit  
16 23 is the first calendar it appeared in --  
17 catalogue rather?

18 A. My recollection is the cover was  
19 a different cover than mailed in May, and I  
20 think I have a sample of it, and I don't  
21 believe that's mailed in May. I have to  
22 look at my numbers, but I think July or  
23 June, probably July.

24 Q. Now, Exhibit 23 says summer,  
25 2007. When would you send out your summer

1 Kirbey

2 catalogue?

3 A. It would drop multiple times over  
4 a three-month period.

5 Q. And when would that three-month  
6 period begin?

7 A. I don't know, I'd have to look.

8 Q. Now, this says next to summer of  
9 2007, V1A. Does that have some  
10 significance in terms of timing?

11 A. It might to the designers, I  
12 don't know. In terms of timing, no. My  
13 guess is the designers are using that to  
14 keep track of their cover changes. I don't  
15 know that for sure.

16 Q. So would that differentiate the  
17 various summer catalogues, just changing  
18 the cover?

19 A. I don't know.

20 (Deposition Exhibit 24, D000192,  
21 marked for identification.)

22 (Deposition Exhibit 25, D000193,  
23 marked for identification.)

24 Q. Can you tell me what Exhibit 24  
25 is?

1 Kirbey

2 A. That is a, this was a spreadsheet  
3 that we created off of our business systems  
4 and selected customers that had the address  
5 of 205 Maywood Avenue.

6 Q. And when was this created?

7 A. Some time in the past seven days.  
8 I don't exactly remember the date, to be  
9 honest with you.

10 Q. And whose database is this from?

11 A. It's from our, Holland's data  
12 that drives our business.

13 Q. On Holland's database is  
14 available to Amsterdam?

15 A. Yes.

16 Q. And to Union Pen?

17 A. Yes. They are broken out  
18 separately, but technically they reside on  
19 the same physical piece of hardware.

20 Q. Any other companies?

21 A. Baldwin Cook and Go Promos.

22 Q. And I presume from this database  
23 that you can tell what mailings or samples  
24 were sent to these people?

25 A. We can look at every mailing that

1                   Kirbey  
2       was sent to an individual.

3           Q.    And that's not included on  
4       Exhibit 24 though, is it?

5           A.    Correct, that's just the customer  
6       list.

7           Q.    So from Exhibit 24, you can't  
8       tell what was sent, if anything, to the  
9       people at 205 Maywood Avenue?

10           MR. AIETA:    Objection.  
11           Counsel, you extracted that page from  
12           what was sent to you as an exhibit  
13           with more than one page, so I think  
14           you're misleading the witness.

15           MR. JACOBSON:    I only have one  
16           page.   That's all you provided us.

17           MR. AIETA:    I think that's  
18           incorrect.

19           THE WITNESS:    I believe this is  
20           the second page.

21           Q.    So Exhibit 25 goes with it?

22           A.    I'd have to look at what you  
23       provided and see if it goes with it.   I  
24       believe so.

25           Q.    So tell me the significance then

1 Kirbey

2 of Exhibit 25.

3 A. 25 is the detail of what was sent  
4 to the customers listed in Exhibit 24.

5 Q. So the five customers listed on  
6 Exhibit 24 --

7 A. No, six customers listed.

8 Q. Sorry, six customers listed on  
9 Exhibit 24 all were sent every mailing  
10 listed on Exhibit 25?

11 A. No. This is a combination of  
12 mail. It doesn't tell you exactly which  
13 customer got what, but in total this is  
14 what was sent to these six customers.

15 Q. So apart from the mailing of the  
16 Windmill catalogue to ASI members, what  
17 evidence do you have that it was received  
18 by anyone at Myron Corp.?

19 MR. AIETA: Objection.

20 A. I don't have any evidence of  
21 anything being received. I can only tell  
22 you what was sent.

23 Q. And from looking at Exhibit 25,  
24 which item on here correlates to the  
25 January, 2007 Windmill catalogue which was

1 Kirbey

2 previously marked as Exhibit 15?

3 A. These do not correspond to the  
4 January, 2007 Windmill.

5 Q. And do you have other documentary  
6 proof to establish that the Windmill  
7 catalogue of January, 2007 was mailed to  
8 somebody at Myron?

9 A. Correct, yes.

10 Q. And what proof does that consist  
11 of?

12 A. That's a list of every customer  
13 that that catalogue was mailed to with a  
14 contact name and address of where it was  
15 delivered to.

16 Q. And that's the catalogue that was  
17 bundled with the Ad Graphics catalogue?

18 A. Correct.

19 Q. Do you know how they were  
20 physically bundled together?

21 A. They were just put in an  
22 envelope.

23 Q. Was there an order that the  
24 catalogues were attached to one another or  
25 bound together?



1 Kirbey

2 A. I couldn't tell you.

3 Q. Were the Windmill Press  
4 catalogues mailed out of any of the Holland  
5 company offices?

6 A. They were mailed from a printer.

7 Q. From a printer?

8 A. Yes. The date is provided to the  
9 printer and I believe they mailed them, but  
10 I'd have to confirm for sure.

11 MR. AIETA: Counsel, if I may  
12 just clarify, it looks like one of the  
13 documents that Betsy Johnson advised  
14 you last night was a privileged  
15 document was not. It was a screen  
16 shot of the spreadsheet with  
17 Mr. Schaefer's name on it. So we'll  
18 provide that as soon as I can print it  
19 out. That's 194.

20 Q. Do you know how the bundling of  
21 the ASI catalogues is done physically, the  
22 process?

23 A. No.

24 Q. It's just done at the printers?

25 A. I believe so.

1 Kirby

2 Q. And how many ASI distributions do  
3 you do, or how many ASI bundling  
4 distributions does, or did Windmill do once  
5 you -- did Windmill Press do once you were  
6 overseeing it?

7 A. What is a bundled distribution?

8 Q. Well, you said that the Windmill  
9 catalogue was bundled with the Ad Graphics.

10 A. Yes, and mailed to distributors.

11 Q. And mailed to distributors.

12 A. I don't have the exact count, but  
13 the file has a count in it so off the top  
14 of my head I couldn't tell you how many,  
15 but the file has a count of every name, so  
16 we would have them.

17 Q. And do you know the size of the  
18 Ad Graphic catalogue?

19 A. No.

20 Q. Was it larger than the Windmill  
21 Press catalogue?

22 A. I don't know.

23 Q. Who sets pricing for calendars  
24 you sell?

25 A. Different by brand.

1 Kirbey

2 Q. By brand?

3 A. Yes.

4 Q. And by brand do you mean

5 Amsterdam versus Union Pen?

6 A. Correct.

7 Q. D you have different brands

8 within each division though?

9 A. No. Our terminology, we would  
10 refer to a brand as Amsterdam would be a  
11 brand, Union Pen would be a brand.

12 Q. Is one -- does one SKU higher,  
13 have a higher price point than the other?

14 A. I don't know.

15 Q. Are you selling or are you  
16 pricing the teamwork calendars at a higher  
17 price point than your other calendars?

18 A. I don't know.

19 Q. This was a new product for you,  
20 the defendant's teamwork calendar?

21 A. It's a compilation of other things  
22 we sold put together. We never sold a pen  
23 and calendar set before. We've sold a  
24 stitched vinyl book like that and we sold a  
25 mountain climber motivational four-color.

1 Kirbey

2 Q. And what sort of pricing  
3 discounts do you typically offer?

4 A. That would be an attorney only  
5 conversation.

6 Q. Well, I'm talking about discounts  
7 that I've seen in publications that have  
8 been sent out talking about catalogues.

9 A. It's varied and it's never the  
10 same for any book. Each customer can have  
11 a specific price if we choose to.

12 Q. So there are times where  
13 customers will receive a catalogue and it's  
14 regular price?

15 A. Yes.

16 Q. And there are times when a  
17 customer will receive a catalogue and the  
18 price of the calendars is discounted by ten  
19 percent?

20 A. Could be, I don't know for sure.

21 Q. Have you ever seen situations  
22 where the calendars are offered at two for  
23 one?

24 A. Not to customers.

25 Q. Then to who?

1 Kirby

2 A. Prospects.

3 Q. To whom?

4 A. Typically to prospects. On rare  
5 occasions it will go to customers. It will  
6 go to what we refer to potentially as last  
7 customers. It wouldn't go any further than  
8 that.

9 Q. Did you do any sampling with the  
10 teamwork calendars?

11 A. Yes.

12 (Recess taken.)

13 (Mr. Lack no longer present.)

14 (Deposition Exhibit 26, MYRON  
15 0214-216, marked for identification.)

16 FURTHER EXAMINATION BY MR. JACOBSON:

17 Q. I marked this document as Exhibit  
18 26, and can you identify it?

19 A. I believe that is one of our  
20 catalogues.

21 Q. And from what day?

22 A. I don't know. I'd have to go  
23 back in the date and see.

24 Q. How can you tell that from --

25 A. I can go back in our system and

1                   Kirbey

2       is.

3           Q.   Do you know whether they're  
4       selling comparably?

5           A.   I don't know.

6           Q.   Do you know whether you ordered  
7       the same amounts?

8           A.   I don't know.

9           Q.   And you don't have any data on  
10       average order size from customers for these  
11       products, do you?

12          A.   No.

13          Q.   Have you received any inquiries  
14       from any customers inquiring about whether  
15       there is any connection between your  
16       company or products and Myron?

17          A.   No.

18               MR. JACOBSON:   Thank you very  
19       much, Mr. Kirbey.

20               MR. AIETA:     I just have one  
21       question to clarify, if you don't  
22       mind.

23       EXAMINATION BY MR. AIETA:

24           Q.   You were asked about the selling  
25       season for these products. You indicated

1 Kirbey

2 it starts January 1 and ends December 31.

3 A. Yes.

4 Q. Is there a period of time during  
5 the year when more of the products are  
6 sold, that is to say when more orders are  
7 taken?

8 A. Typically second week of  
9 September through December, first week in  
10 December.

11 MR. AIETA: No other questions.

12 MR. JACOBSON: Thank you.

13 (Time noted: 4:00 p.m.)  
14  
15  
16  
17  
18  
19  
20  
21  
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A C K N O W L E D G M E N T

STATE OF NEW YORK     )  
                                      : ss  
COUNTY OF                 )

I, KEVIN KIRBEY, hereby certify  
that I have read the transcript of my  
testimony taken under oath in my deposition  
of September 19, 2007; that the transcript  
is a true, complete and correct record of  
my testimony, and that the answers on the  
record as given by me are true and correct.

\_\_\_\_\_  
KEVIN KIRBEY

Signed and subscribed to before  
me, this                 day  
of                         , 2007.

\_\_\_\_\_  
Notary Public, State of New York



C E R T I F I C A T E

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF NEW YORK        )

I, DAVID HENRY, a Notary Public within  
and for the State of New York, do hereby  
certify:

That KEVIN KIRBEY, the witness whose  
deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition  
is a true record of the testimony given by  
such witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage; and that I am  
in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 20th day of September,  
2007.

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DAVID HENRY

E R R A T A

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[illegible]

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